UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JAMES A. CANTY,	:	
Plaintiff	:	Civil Action No. 3:04 CV 1678 (CFD)
v.	:	
	:	
RUDY'S LIMOUSINE,	:	
Defendant.	:	

RULING ON DEFENDANT'S MOTION TO DISMISS

Plaintiff James A. Canty brings this action against his former employer, Rudy's Limousine. His complaint contains eight counts: that the defendant discriminated against him on the basis of his race, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 200e et seq. and the Connecticut Fair Employment Practices Act ("CFEPA"), Conn. Gen. Stat. § 46a-60 et seq.; that the defendant discriminated against him on the basis of his age, in violation of the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621 et seq., and CFEPA § 46a-60(a)(1); that the defendant aided and abetted discriminatory conduct by other employees, in violation of CFEPA § 46a-60(a)(5); that the defendant's unlawful termination of Canty breached an implied contract that his employment would be free from racial and age discrimination; that his termination similarly constituted a breach of the implied covenant of good faith and fair dealing; and finally, that the discrimination Canty suffered resulted from the defendant's negligent supervision of its employees. Canty seeks compensatory damages for his allegedly unlawful termination, costs, and attorney's fees. Defendant Rudy's Limousine ("Rudy's") has moved to dismiss Counts Five, Six, Seven, and Eight pursuant to Fed. R. Civ. P. 12(b)(6), for failure to state a claim upon which relief may be granted.

I. Background[1]

Canty is a 65-year-old African-American male. He began working as a driver for Rudy's Limousine in August 1990. Canty usually worked at least six days a week and made himself available to drive any free shift. He worked, on average, over forty hours per week and never dropped below an average of thirty hours per week. Canty alleges that Rudy's written manual stated that "full-time" drivers (classified as those working more than thirty hours per week) were to be provided permanent vehicles. Nonetheless, when Canty requested to be permanently assigned a car, he claims Rudy's told him that he lived too far away to be given one.[2] Without being assigned a permanent vehicle, Canty was forced to work as a "jumper," who could only drive when another full-time driver was not using his own assigned vehicle. Jumpers had to pick up free cars from the assigned drivers' homes and return them after their shifts, and were forced to bear all the associated commuting costs.

Canty claims that he held jumper status longer than any other driver in Rudy's history, despite his repeated requests to be assigned his own car. He alleges that non-African-American drivers who lived equally far away from Rudy's Stamford location, who were younger, and who possessed less seniority with the company were assigned permanent vehicles and given more working hours than Canty. Canty also claims that he targeted because of his race and age and told that he was a deficient employee and an unproductive worker, although he was a driver of long standing with many repeat customers.

---

[1] These facts are taken from the plaintiff's complaint.

[2] Rudy's principal place of business is Stamford, Connecticut. Canty lives in New Haven, Connecticut, approximately 42 miles away.

Canty left his employment with Rudy's on July 3, 2003. He argues that he was constructively discharged due to the defendant's illegal discrimination against him.

II. Standard of Review

When considering a Rule 12(b)(6) motion to dismiss, the Court accepts as true all factual allegations in the complaint and draws inferences from these allegations in the light most favorable to the plaintiff. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other grounds, Davis v. Scherer, 468 U.S. 183 (1984); Easton v. Sundram, 947 F.2d 1011, 1014-15 (2d Cir. 1991), cert. denied, 504 U.S. 911 (1992). Dismissal is warranted only if, under any set of facts that the plaintiff can prove consistent with the allegations, it is clear that no relief can be granted. See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Frasier v. General Elec. Co., 930 F.2d 1004, 1007 (2d Cir. 1991). "The issue on a motion to dismiss is not whether the plaintiff will prevail, but whether the plaintiff is entitled to offer evidence to support his or her claims." United States v. Yale-New Haven Hosp., 727 F. Supp. 784, 786 (D. Conn. 1990) (citing Scheuer, 416 U.S. at 232). Thus, a motion to dismiss under 12(b)(6) should not be granted "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Sheppard v. Beerman, 18 F.3d 147, 150 (2d Cir. 1994) (citations and internal quotations omitted), cert. denied, 513 U.S. 816 (1994). In its review of a 12(b)(6) motion to dismiss, the Court may consider "only the facts alleged in the pleadings, documents attached as exhibits or incorporated by reference in the pleadings and matters of which judicial notice may be taken." Samuels v. Air Transport Local 504, 992 F.2d 12, 15 (2d Cir. 1993).

III. Discussion

Each of the plaintiff's challenged claims is discussed in turn.

A. Count Five: Aiding and Abetting under Conn. Gen. Stat. § 46a-60(a)(5)

Canty alleges that he asked several different agents of Rudy's for a permanent vehicle: Roy Spezzano, Rudy's chairman and CEO; Bob Mullin, the general manager; and Ken Curcio, another manager. All of these persons allegedly denied Canty's request and discriminated against him on the basis of his age and race. Canty claims that Rudy's knew that he was the victim of unlawful discrimination but made no efforts to curtail Spezzano's, Mullin's, or Curcio's behavior, rendering Spezzano and Rudy's liable under Conn. Gen. Stat. § 46a-60(a)(5) for aiding and abetting discriminatory conduct.[3] Rudy's argues that this count should be dismissed because an employer may not be held liable under Connecticut law for aiding and abetting its own discrimination.

Connecticut General Statutes section 46a-(60)(a)(5) provides that it is unlawful discrimination "[f]or any person, whether an employer or employee or not, to aid, abet, incite, compel or coerce the doing of any act declared to be a discriminatory employment practice or attempt to do so." The law in Connecticut is clear that while an individual employee may be held liable for aiding and abetting his employer's discrimination, an employer can not be liable for aiding and abetting its own discriminatory conduct. Bolick v. Alea Group Holdings, Ltd., 278 F. Supp. 2d 278, 282 n.5 (D. Conn. 2003) (citing Jones v. Gem Chevrolet, 166 F. Supp. 2d 647, 649 n.1 (D. Conn. 2001)). This is similar to Connecticut's intracorporate conspiracy doctrine where, if the allegations involve only one corporate entity acting through its employees, no conspiracy

[3] Roy Spezzano is not a named defendant in this action, and therefore Canty has failed to raise a valid claim against him. The Court will consider Count Five only in regard to defendant Rudy's Limousine.

claim can stand. See Natale v. Town of Darien, 1998 U.S. Dist. LEXIS 2356, *16 (D. Conn. Feb. 26, 1998).

Canty may seek recovery from individual Rudy's employees for illegally aiding and abetting discrimination against him, should he choose to file an independent lawsuit or to join those parties as defendants to this action. His remedy for the company's conduct, however, lies in the direct claims of discrimination he has raised in Counts One through Four of his complaint. Rudy's can not have discriminated against him and, at the same time, aided and abetted itself in discriminating against him. Therefore, the Court grants the defendant's motion to dismiss Count Five of the complaint.

B. Count Six: Breach of Implied Contract

Canty alleges that the defendant "by its words, conduct, and actions, conducted business in a manner" whereby there existed an implied contract that Canty's employment would be governed in an ethical, legal fashion and would be free from discrimination. Rudy's argues that the plaintiff's claim of breach of implied contract is too general to be cognizable and can not be premised merely on the existence of federal and state anti-discrimination laws.

In order to create an implied contract under Connecticut law, there must be a meeting of the minds and an actual agreement between the parties, by which the defendant undertakes a contractual commitment to the plaintiff. Pecoraro v. New Haven Register, 344 F. Supp. 2d 840, 844 (D. Conn. 2004) (citing Peralta v. Cendant Corp., 123 F. Supp. 2d 65, 83 (D. Conn. 2000), and Therrien v. Safeguard Mfg. Co., 180 Conn. 91, 94, 429 A.2d 808 (1980)). A "general assertion that an implied contract existed based upon defendant's 'words, comments, and actions' without more is insufficient to establish such an undertaking or a meeting of the minds."

Pecoraro, 344 F. Supp. 2d at 844. Nor is an implied contract deemed to exist between employer and employee merely because federal or state laws prohibit discrimination. See id. ("[T]o accept plaintiff's theory would be tantamount to saying that any deviation by an employer . . . from the federal or state anti-discrimination laws gives rise to a claim for breach of an implied contract. That is not the law."); see also Peralta, 123 F. Supp. 2d at 84 ("[A]ny promises in [an employer's anti-discrimination] policy are general statements of adherence to the anti-discrimination laws, [and] standing alone they do not create a separate and independent contractual obligation.").

In his memorandum in opposition to the motion to dismiss (though not in his complaint), Canty also cites the provision of his employee manual stating that all full-time Rudy's drivers would be issued a permanent vehicle as conduct creating an implied contract. See Doc. #16. While statements in an employee handbook or manual may give rise to an implied contract between an employer and its employee, those statements still must provide a basis for implying a specific contractual promise. See Finley v. Aetna Life & Casualty Co., 202 Conn. 190, 198-99, 520 A.2d 208 (1987), overruled on other grounds, 225 Conn. 782, 626 A.2d 719 (1993); see also Christensen v. Bic Corp., 18 Conn. App. 451, 458, 558 A.2d 273 (1989) (holding that language in employee manual describing how bonuses would be paid did not create an implied contract and stating that "a contractual promise cannot be created by plucking phrases out of context; there must be a meeting of the minds between the parties."). The Court finds that this provision of the employee manual cited by Canty can not reasonably be construed to create an implied contract prohibiting racial and age discrimination. See Foster v. Mass Mut. Life Ins. Co., 2004 U.S. Dist. LEXIS 7759, *9-*10 (D. Conn. Apr. 14, 2004) ("[I]n particular cases, whether an employee manual issued by the employer may be deemed to give rise to an enforceable contract

is a question of law properly decided by the court."); see also Peralta, 123 F. Supp. 2d at 84.

Because Canty has alleged no evidence of a specific agreement with his employer that would create an implied contract, his claim is barred by the principles enunciated in Pecoraro and Peralta. Therefore, the Court grants the defendant's motion to dismiss Count Six of the complaint.

C. Count Seven: Breach of the Implied Covenant of Good Faith and Fair Dealing

Canty also claims that Rudy's breach of the implied contract regarding the policy of assigning permanent cars to full-time drivers also constituted a breach of the implied covenant of good faith and fair dealing.

In Connecticut, "every contract carries an implied covenant of good faith and fair dealing requiring that neither party do anything that will injure the right of the other to receive the benefits of the agreement." Habetz v. Condon, 224 Conn. 231, 238, 618 A.2d 501 (1992); accord Home Ins. Co. v. Aetna Life Casualty Co., 235 Conn.185, 200, 663 A.2d 1001 (1995); Feinberg v. Berglewicz, 32 Conn. App. 857, 862, 632 A.2d 709 (1993); Gibbons v. NER Holdings, Inc., 983 F. Supp. 310, 319 (D. Conn 1997). To state a claim for breach of the covenant of good faith and fair dealing, a plaintiff either "must allege either that an enforceable employment contract exists, or that the employer's actions in discharging the employee violated a recognized public policy." Cowen v. Federal Express Corp., 25 F. Supp. 2d 33, 37 (D. Conn 1998).

The Court has denied Canty's assertion that the language in his employee manual regarding the assignment of permanent vehicles created an implied employment contract. See

Part III.B., supra. Nor does Canty allege that his employment was governed by any other explicit contract. Therefore, the Court will apply the public policy analysis applicable to at-will employees in evaluating Canty's complaint.

The Connecticut Supreme Court has written of its "adherence to the principle that the public policy exception to the general rule allowing unfettered termination of an at-will employment relationship is a narrow one. . . ." Thibodeau v. Design Group One Architects, LLC, 260 Conn. 691, 701, 802 A.2d 731 (2002) (quoting Parsons v. United Techs. Corp., 243 Conn. 66, 79, 700 A.2d 655 (1997)). A plaintiff must allege that his or her termination violated an "explicit statutory or constitutional provision" or another "judicially conceived notion of public policy." Id. at 699. However, where the employee has another available statutory remedy for the complained-of violation, he may not also bring an action for breach of the implied covenant of good faith and fair dealing. See Blantin v. Paragon Decision Res., Inc., 2004 U.S. Dist. LEXIS 17605, *4 (D. Conn. Aug. 31, 2004); see also Atkins v. Bridgeport Hydraulic Co., 5 Conn. App. 643, 648, 501 A.2d 1223 (1985) ("The cases which have established a tort or contract remedy for employees discharged for reasons violative of public policy have relied upon the fact that in the context of their case the employee was otherwise without remedy and that permitting the discharge to go unredressed would leave a valuable social policy to go unvindicated.") (internal quotations omitted).

Here, the public policy violations alleged by Canty are the same as those contained in Counts One through Four of his complaint, that he was the subject of unlawful racial and age discrimination. Those violations adequately may be redressed through actions under Title VII, the Age Discrimination in Employment Act, and CFEPA. Indeed, Canty has sought precisely

such relief in Counts One through Four of his complaint. Since Canty has alternative statutory remedies available to him for these public policy violations, he may not bring an additional common law claim for breach of the implied covenant of good faith and fair dealing. Therefore, the Court grants the defendant's motion to dismiss Count Seven of the complaint.

D. Count Eight: Negligent Supervision

Finally, Canty alleges that the discrimination he suffered at the hands of Rudy's employees Roy Spezzano, Bob Mullin, Ken Curcio and Dany Spezzano (none of whom assigned him a permanent vehicle) was caused by Mullin and Curcio's negligent supervision of other Rudy's employees, and ultimately led to his constructive discharge.[4] The defendant argues that Canty has failed to plead a valid claim for negligent supervision.

To state a claim for negligent supervision under Connecticut law, "a plaintiff must plead and prove that he suffered an injury due to the defendant's failure to supervise an employee whom the defendant had a duty to supervise. A defendant does not owe a duty of care to protect a plaintiff from another employee's tortious acts unless the defendant knew or reasonably should have known of the employee's propensity to engage in that type of tortious conduct." Abate v. Circuit-Wise, Inc., 130 F. Supp. 2d 341, 344 (D. Conn. 2001). Canty, however, has alleged no specific tortious acts. Rather, he argues that his injury lay in being the subject of unlawful discrimination.

In Deguzman v. Kramer, 2005 U.S. Dist. LEXIS 19293 (D. Conn. Aug. 22, 2005), the

[4] The identity of and discriminatory actions taken by these Rudy's employees are unknown. Canty's complaint states that Roy Spezzano and Dany Spezzano were the supervisors of Rudy's general manager Mullin and manager Curcio, see ¶ 54, but that his "injuries and damages . . . were caused by Mr. Mullin's and Mr. Curcio's negligent supervision of [their] employees." Complaint at ¶ 56.

plaintiff Francisco Deguzman was a school custodian employed by the Town of Darien for seventeen years, who worked an alternative schedule one day a week in order to perform his duties as a deacon of his local church. In October 2003, the Darien school district hired a new facilities director who refused to accommodate Deguzman's alternative work schedule. When Deguzman nonetheless continued to work under the previous arrangements, he was discharged. Deguzman then filed a claim under Title VII for religious discrimination, and state law claims including that the defendants' negligent supervision of the new facilities director had caused him to suffer injurious discrimination.

The district court in Deguzman dismissed the plaintiff's negligent supervision claim. Holding that to determine whether a defendant was liable for negligent supervision one must look to the traditional four elements of a negligence claim, the judge concluded that "to allow a violation of Title VII to satisfy the injury prong of that test would be to create a cause of action under state law with no indication from either the Connecticut legislature or courts that such a cause of action is appropriate." Id. at *6. Because Deguzman had not alleged any common law tort was committed, his negligent supervision claim failed as a matter of law. Id. at *7.

Similarly, Canty here has alleged no injury other than violations of Title VII, the ADEA, and CFEPA. Under Deguzman, such violations are insufficient bases for a negligent supervision claim. Therefore, the Court grants the defendant's motion to dismiss Count Eight of the complaint.

IV. Conclusion

Defendant's Motion to Dismiss [Doc. # 7] is GRANTED. The remaining counts of the complaint are Count One, alleging racial discrimination in violation of Title VII; Count Two,

alleging age discrimination in violation of the ADEA; Count Three, alleging racial discrimination in violation of the CFEPA; and Count Four, alleging age discrimination in violation of CFEPA.

So ordered this __15th__ day of September 2005 at Hartford, Connecticut.

__/s/ CFD_____
CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE